Appendix A

In the Supreme Court of the State of Nevada

Nos. 5363 and 5364

The State of Nevada,	Appellant,
vs.	
W. Mark Eddington and J. MacArthur Wright,	Respondents.

Appeal from orders of the Second Judicial District Court, Washoe County, granting writs of habeas corpus;

John W. Barrett, Judge.

The order in Case No. 5363 is affirmed, and the order in Case No. 5364 is reversed.

Harvey Dickerson, Attorney General; Daniel R. Walsh, Deputy Attorney General; Carl F. Martillaro, Special Deputy Attorney General, of Carson City, for Appellant.

Morse and Graves, of Las Vegas, and Robert W. Hughes, of Salt Lake City, Utah, for Respondent W. Mark Eddington

Vargas, Dillon; Bartlett and Dixon, of Reno, for Respondent J. MacArthur Wright.

OPINION

By the Court, Thompson, C.J.:

The issue presented by this consolidated appeal is the legal sufficiency of the evidence upon which a grand jury acted in returning two indictments charging embezzlement. One (Case No. 5363) alleged that Eddington and Frisby embezzled $100,000 from the People's Investment Company. The other (Case No. 5364) charges that Eddington, Wright, and Frisby embezzled $200,000 from the Mark Twain Life Insurance Company. Eddington and Wright challenged the sufficiency of the evidence through petitions for habeas corpus. Shelby v. District Court, 82 Nev. 204, 414 P.2d 942 (1966). Frisby did not interpose a challenge. The district court ruled that the evidence was not sufficient to warrant holding either defendant for trial and discharged each pursuant to his application for habeas corpus. We affirm that ruling in Case No. 5363, but reverse in Case No. 5364.

The quality and persuasive force of evidence needed to support an indictment are expressed by NRS 172.260(2) and NRS 172.280. The first commands that "none but legal evidence, * * * to the exclusion of hearsay or secondary evidence," shall be received. The second suggests that grand jurors should indict "when all the evidence before them, taken together, is such as, in their judgment, would, if unexplained and uncontradicted, warrant a conviction by the trial jury."

It is not useful to relate the mass of legal evidence presented to the grand jury. In the Mark Twain case there was ample to justify a belief that, absent ex-

planation or contradiction, a trial jury could lawfully convict the defendants. Accordingly, we shall recite only an abbreviated version of the record simply to show that statutory standards were met. As to the People's Investment matter we shall briefly note wherein the showing was deficient.

People's and Mark Twain are domestic corporations. Each was chartered in 1963. The aim of Mark Twain was to qualify and do business as a stock life insurance company. People's was organized to conduct the sale of shares of stock in Mark Twain. In October, 1963 the two companies made an agreement giving People's authority to manage Mark Twain during the sale of the common stock to be offered by Mark Twain. Eddington was the vice-president and a director of Mark Twain, and the president and a director of People's. Wright was the secretary-treasurer, resident agent, director, and counsel for Mark Twain, and counsel for People's. Frisby was the president and a director of Mark Twain, and the secretary-treasurer and director of People's. Eddington and Frisby were a majority of the Board of Directors of People's and, with Wright, composed the "executive committee" of Mark Twain.

Enough of the common stock of Mark Twain was sold by October, 1964 to cause the State to issue Mark Twain a license to do business as a stock life insurance company. The function of People's under the stock sales agreement had been discharged. A majority of the Board of Mark Twain believed that People's had ceased all operations.

Mark Twain commenced selling insurance in January, 1965. From then through September, 1965, more than $200,000 left its treasury without authority from the Board of Directors. Most of that amount was paid out as "insurance commissions" to People's ($107,000), and to Eddington ($34,421.22) and Frisby ($32,000), individually. The charter of People's did not grant it authority to solicit or sell insurance, nor was an agent's license issued to it for that purpose. Although the minutes of Mark Twain ambiguously reflect that its "executive committee" (Eddington, Wright, and Frisby) had approved an arrangement with People's, and with Eddington and Frisby individually, to sell Mark Twain insurance on a commission basis, the majority of the Board of Directors of Mark Twain assert that such arrangement was never presented to them for consideration and approval, and that the minutes prepared by Wright so indicating, are false. In any event, the record shows that the sums expended by Mark Twain for "insurance commissions" substantially exceeded the percentages authorized by the executive committee, assuming its authority to act for Mark Twain. The record also shows payments totalling $15,000 to Wright as counsel fees, and almost $43,000 in "travel expense," each without approval of the Board. Indeed, the majority of the Board was kept in the dark about these expenditures. When they inquired, the members of the executive committee would engage in a filibuster and refuse to respond candidly. Even physical violence was threatened. The stability of Mark Twain deteriorated and the company was placed in receivership.

These facts justify the belief held by the grand jury that substantial funds of Mark Twain were fraudulently appropriated by Eddington, Frisby, and Wright. The elements of embezzlement [NRS 205.300] are present. A fiduciary relationship existed between Mark Twain and those charged with defalcations. Cf. Carter v. State, 79 Nev. 89, 378 P.2d 876 (1963). Money was used for purposes other than those for which entrusted, thus permitting an inference of fraudulent intent. State v. Trolson, 21 Nev. 419, 32 P. 930 (1893). A prima facie case was made. Whether it will persuade at trial where the defendants will be present with counsel, and afforded an opportunity to explain their conduct, is another matter, wholly irrelevant to the issue at hand.

Although Eddington and Wright suggest that the grand jury should have heard from them before returning indictments, the grand jury was not required to do so. NRS 172.270. Indeed, had they been granted an audience, the grand jury would not have been required to accept their explanations, but could indict notwithstanding them. In this respect the grand jury function is not unlike that of the justice of the peace upon a preliminary examination. [See State v. Fuchs, 78 Nev. 63, 368 P.2d 869 (1962), where we held that the evidence at the preliminary hearing was sufficient to justify holding the accused to answer in the district court, notwithstanding her written exculpatory statement received in evidence.]

The indictment charging embezzlement from People's Investment is not supported by sufficient evidence

to warrant trial. Although the record reflects substantial expenditures without explanation, there is nothing to show that the expenditures were unauthorized. Of course, the money flow from Mark Twain to People's and out, may well be competent evidence at the trial of the Mark Twain case.

Other contentions respecting the two indictments have been considered and are without substance. The order of the district court granting habeas corpus in the Mark Twain Case No. 5364 is reversed, and the cause remanded to the district court for trial. The order granting habeas corpus in the People's Investment Case No. 5363 is affirmed.

Thompson, C.J.

We concur:
Collins, J.
Zenoff, J.

Filed September 25, 1967,
C. R. Davenport, Clerk.

Appendix B

In the Supreme Court of the State of Nevada

No. 5464

State of Nevada,
Petitioner,
vs.
Second Judicial District Court, State of Nevada, for the County of Washoe, the Honorable Thomas O. Craven, a District Judge thereof,
Respondent.

PERMANENT WRIT OF PROHIBITION

The State of Nevada to the Second Judicial District Court and the Honorable Thomas O. Craven, District Judge thereof, greetings:

Whereas, Harvey Dickerson, Attorney General of the State of Nevada, by and through Daniel R. Walsh, Chief Deputy Attorney General, Carl F. Martillaro, Special Deputy Attorney General, and John A. Porter, Deputy Attorney General, did, in our Supreme Court of the State of Nevada, present facts by verified petition that the Second Judicial District Court, Honorable Thomas O. Craven, Judge thereof, is about to hold hearings and decide matters already determined by this Court, and is exceeding the jurisdiction of said

court in doing so unless restrained and prohibited from doing so; and

Whereas, the Supreme Court of the State of Nevada did on the 8th day of November, 1967, hold a hearing in chambers on this matter, with the following counsel present: John C. Renshaw of Vargas, Bartlett and Dixon, attorneys for J. MacArthur Wright; Madison B. Graves, Esq., attorney for W. Mark Eddington; J. Rayner Kjeldsen, Esq., attorney for C. Larry Frisby; Daniel R. Walsh, Carl F. Martillaro, and John A. Porter; and

Whereas, it has been determined by this Court that the matters presented by the petition for writ of habeas corpus filed by J. MacArthur Wright and petition for writ of habeas corpus filed by W. Mark Eddington, joined in by defendant C. Larry Frisby, and the matters presented by a petition for stay filed by defendant W. Mark Eddington, have been previously presented to this Court and found to be without merit or substance; and

Whereas, the District Court is without jurisdiction to reconsider these matters previously disposed of by this Court,

It Is Hereby Ordered that the Second Judicial District Court, Honorable Thomas O. Craven, Judge thereof, be and is hereby prohibited, enjoined and restrained from considering or acting further on the petitions for habeas corpus presented by defendants J. MacArthur Wright, W. Mark Eddington and C. Larry Frisby and assigned Washoe County Civil Nos. 240497 and 240498.

It Is Further Ordered that the said Court and Judge be prohibited, enjoined and restrained from considering or acting further on a petition for stay filed by defendant W. Mark Eddington in Washoe County Criminal Case No. 233307.

It Is Further Ordered that the described petitions for habeas corpus and stay be and they hereby are dismissed.

It Is Further Ordered that counsel for each of the defendants notify this Court in writing by November 15, 1967, whether each and every defendant will or will not waive the sixty day rule for trial on the merits.

Done at Carson City, Nevada, this 8th day of November, 1967.

/s/ Thompson
Gordon Thompson, Chief Justice

/s/ Collins
Jon Collins, Justice

/s/ Zenoff
David Zenoff, Justice

Filed November 8, 1967,
C. R. Davenport, Clerk.

Appendix C

No. 233307 Dept. No. 2

In the Second Judicial District Court
of the State of Nevada
in and for the County of Washoe

In the Matter of the Application
of
J. MacArthur Wright for a Writ of
Habeas Corpus.

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable John W. Barrett, Judge of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, Department No. 2 thereof:

Comes Now, J. MacArthur Wright, acting by and through his counsel, Vargas, Bartlett & Dixon, John C. Bartlett, Esq. appearing and making this request, and petitions the above entitled Court for the issuance of a Writ of Habeas Corpus and as grounds therefor states:

First

I.

That he, the said J. MacArthur Wright, is unlawfully restrained of his liberty by C. W. Young, Sheriff

of Washoe County, State of Nevada; that said restraint consists in this, that the said J. MacArthur Wright has been required to appear before the above entitled Court and is currently released by said Court on his own recognizance, but with the requirement that he appear before the Court to plead to the Indictment pending against him on a charge of embezzlement.

II.

That the said restraint of liberty is illegal and that the illegality thereof consists in this, to wit:

1. That said Indictment charges petitioner with the crime of embezzlement, a violation of Section 205.300 Nevada Revised Statutes; that said Indictment was found on the 29th day of November, 1966, by the same Grand Jury which had found the previous Indictment against J. MacArthur Wright on the 11th day of August, 1966, to which a demurrer had been sustained before this Court; that no new testimony was taken before the Grand Jury which issued the Indictment here in question, but rather relied solely upon the testimony taken before it for its Indictment of August 11, 1966.

That at the time of the Grand Jury hearing which resulted in the Indictment dated August 11, 1966, this Petitioner requested by telephone call to Carl Martillaro, one of the prosecutors who was presenting the case to the Grand Jury, and William Raggio, the District Attorney of Washoe County, that he be permitted to appear before the Grand Jury then in session, and to explain his position in the matter and

to explain evidence which was being presented to them. That also, at the same time, this petitioner sent a telegram to the foreman of the Grand Jury requesting the right to be heard.

That at the time of the Grand Jury session, out of which the present Indictment was found Petitioner, acting by and through his counsel, John C. Bartlett, sent letters to the foreman of the Washoe County Grand Jury requesting the right to appear and be heard, copies of which letters are marked Exhibit A, annexed hereto and by reference made a part hereof.

That Section 172.270, Nevada Revised Statutes, provides as follows:

> "Grand jury not bound to hear evidence for defendant, but may order production of explanatory evidence; issuance of process for witnesses. The grand jury is not bound to hear evidence for the defendant. It is their duty, however, to weigh all evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they must order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses."

That acting pursuant to said statute, the Grand Jury refused, on both occasions, to permit Petitioner to appear before them and be heard. That such denial constitutes a denial of due process, a denial of equal protection under law, and the statute authorizing the Grand Jury to refuse a defendant the right to be heard is unconstitutional, and violative of the

Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States of America.

Second

That the Petitioner was deprived of his constitutional rights to due process and to equal protection under the law, guaranteed him by the Fifth, Sixth and Fourteenth Amendments of the United States of America Constitution in this, that the presentation of evidence to the Grand Jury was done in a biased manner and evidence known to the prosecution was withheld from the Grand Jury. The instances of this type of conduct are as follows:

A. Prosecutor Daniel Walsh had a personal bias arising in part at least, from the fact that he had acted as the attorney for Louis Mastos, Insurance Commissioner of the State of Nevada, in a civil proceeding wherein the defendants which were indicted by this Grand Jury were on the other side of the case from him.

B. That Daniel Walsh had a personal bias because several months prior to the hearing before the Grand Jury, in the presence of Petitioner, Adam Duncan, one of the people indicted by the Grand Jury, who was associate counsel with Petitioner herein on the other side of the case, stated to Daniel Walsh, "I've never seen anyone so unconcerned with due process or constitutional rights", and Daniel Walsh replied, "It's none of the your business." Duncan said, "You son-of-a-bitch", and Walsh stated, "You'll live to regret this."

C. That Carl Martillaro was the owner of stock in the Mark Twain Life Insurance Company at the time he was representing the prosecution.

D. That in a previous proceeding Petitioner, who is a duly licensed practicing attorney in the State of Nevada had, in a proceeding before the Supreme Court of the State of Nevada, accused the said Carl Martillaro of attempting to deceive the Supreme Court by quoting from a part of a case only, and on information and belief Petitioner states that Carl Martillaro had a personal bias against him for this reason.

E. That the transcript before the Grand Jury of Washoe County, gives evidence of the bias of these two prosecutors in this, that they admonished witnesses who were favorable to the prosecution in one manner, and permitted these same witnesses to indulge in hearsay statements without admonition. By contrast, as to witnesses who might be favorable to the defendant's views of the case, they were admonished in a different manner and on at least one occasion, a witness favorable to defendant's case was advised that hearsay would not be permitted.

F. That these prosecutors discussed the case with the Grand Jury off the record so that, and on information and belief, this Petitioner would state what was said then was highly prejudicial to the rights of this Petitioner and in any event, Petitioner was deprived of his constitutional rights to due process by having unrecorded discussions take place between the prosecution and the Grand Jury.

G. That nowhere in the record or transcript before the Grand Jury does it appear that the Grand Jury was ever advised at the time of the initial hearing, that this Petitioner desired to be heard.

H. That the prosecutors concealed evidence from the Grand Jury in the following respects:

1. Although they knew the witness Norris had been convicted of the crime of embezzlement, they did not bring this fact before the Grand Jury.

2. Although Carl Martillaro knew that as to a $10,000 fee received by Petitioner's law firm, that the same was reinvested immediately in the common stock of the corporation, this fact was concealed from the Grand Jury and the Grand Jury could well have inferred that Petitioner in fact got $10,000 worth of stock and $10,000 in cash. Petitioner had explained this entire matter to Carl Martillaro before the Grand Jury hearing, and Carl Martillaro concealed the true picture from the Grand Jury and on information and belief Petitioner would state that this biased the Grand Jury against him.

3. That the prosecutors had in their possession the stock records of Peoples Investment Company showing that Petitioner had no stock in this company. Nevertheless, and for the deliberate purpose of prejudicing the rights of Petitioner, prosecutors presented Hale Bennett, who testified that Petitioner owned one-third interest in Peoples Investment Company and furthermore, Mr. Bennett was allowed to testify to immaterial matters concerning a banking venture, which were prejudicial to this Petitioner and the said

Hale Bennett was the first witness presented by the prosecution which, as a trial tactic, prejudiced the rights of this Petitioner.

4. That prosecutor Daniel Walsh had discussed the matters testified to by Hale Bennett with other people who were thoroughly familiar with these matters and the statements to Daniel Walsh were favorable to the position of Petitioner and Daniel Walsh then concealed from the Grand Jury the testimony of these witnesses.

5. That one of the Grand Jurors, Mary Manker, was at the time of the Grand Jury hearing, a stockholder in the Mark Twain Life Insurance Company and on information and belief had, as a stockholder, received communications from the Attorney General's office when the Attorney General's office was acting as counsel in a receivership hearing prior to the hearing before the Grand Jury. The contents of these communications were highly prejudicial to the rights of the Petitioner. The prosecution either knew, or should have known since they had the corporate records, that Mary Manker was a stockholder.

I. That there was a great deal of pre-indictment publicity participated in part at least by Daniel Walsh, one of the prosecutors, which publicity was highly prejudicial to the rights of the defendants, including this petitioner. Petitioner proposes, at the time of the hearing on this matter, to introduce as evidence various newspaper exhibits in support of this contention.

J. That as further evidence of the bias of the prosecutors, when C. Larry Frisby, one of the defendants, represented to the Court that he was without funds and requested of the Court to appoint counsel to represent him, both of the prosecutors, to-wit: Daniel Walsh and Carl Martillaro, appeared in open court on December 28, 1966, and opposed the appointment of an attorney. At that hearing, prosecutor Carl Martillaro undertook an extensive examination into the financial status, the business plans of the defendant, and even went so far as to inquire as to how much money the defendant had earned during the period of time that he was employed by the Mark Twain Life Insurance Company. When told, they asked if he did not receive a greater sum, which question could only have been asked for the purpose of inferring to the Court that the defendant had received more money than he declared, and therefore would be guilty of embezzlement, of which he is charged.

Third.

I.

That further prosecution is barred by the statutes of Nevada.

In connection with the foregoing contention, the original indictment is identical with the present indictment, except as to date and the fact that the original indictment was called Count I, and the present indictment has no count. The Court sustained a demurrer to the original indictment on the grounds of improper joinder in this, that more than one offense

was charged. The ruling was made pursuant to Section 174.230 Nevada Revised Statutes.

II.

At the time of so ruling, the trial court, pursuant to Nevada Revised Statutes, Section 174.270, stated, "I direct that the case be submitted to the same or another grand jury or that an information be filed".

Further in its decision, the Court went on to state, "Now I think some latitude must be allowed with regard to discretion to be exercised by the Attorney General in this case, and I feel if the Attorney General desires to continue to proceed in this matter that it can be done by either presentation to the grand jury, the present one or another one, or through the filing of a criminal complaint, preliminary hearing, or information. Of course, there is another way by filing an information upon affidavit, and I suppose that can be done, too."

Later in the decision, the Court stated, "Mr. Bartlett, I am not sure the Court has the power to tell a prosecuting attorney how, when and why he will proceed. They may even decide not to bring this back here. I don't think I can tell the representatives of the Attorney General they can or cannot do this or anything else. I am inclined to agree with Mr. Martillaro that they go ahead and do what is going to be done. Then, if there is something wrong, you can complain".

And finally the Court stated, "I will tell you what the ruling will be right now. I have given the State

thirty days within which to proceed or not proceed. If the State doesn't proceed, that is the end of the problem".

III.

It is the contention of this Petitioner that the Court in so ruling did not correctly follow the statute, Nevada Revised Statutes 174.270, which provides as follows:

> "Allowance of demurrer bar to another prosecution; exceptions.
>
> "1. If the demurrer is allowed, the judgment is final upon the indictment or information demurred to and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment or information, directs the case to be submitted to the same or another grand jury, or directs a new information to be filed.
>
> "2. After such order or resubmission the defendant may be examined before a magistrate and discharged or committed by him, as in other cases."

and that the Court further delegated its judicial powers to the Attorney General's office improperly, so that the case was not in fact, submitted to the same or another grand jury.

IV.

Nevada Revised Statutes 174.280, provides as follows:

"Discharge of defendant; exoneration of bail or return of deposit when amendment not permitted.

"If the court does not permit the information to be amended nor direct that an information be filed or that the case be resubmitted, as provided in NRS 174.270, the defendant, if in custody, must be discharged, or if admitted to bail his bail is exonerated, or if he has deposited money instead of bail the money must be refunded to him."

As appears from the foregoing statute, if the case is not ordered to be resubmitted as provided in NRS 174.270, the defendant must be discharged.

If there be any doubt as to how the Court's ruling was understood by the prosecution, petitioner here points out the following conduct of the prosecution after the Court's ruling:

1. The prosecution got an extension of time within which to resubmit Count III of the original Indictment or otherwise proceed against the defendant, W. Mark Eddington.

2. That in fact the prosecution did not resubmit such Count to the Grand Jury, or otherwise proceed against W. Mark Eddington, so that if it had been directed by the Court to do so the prosecution would be in violation of the Court's order.

3. This conduct on the part of the prosecution clearly shows that in their judgment the discretion as to whether or not this case would be resubmitted to the same, or another, Grand Jury, or otherwise proceeded against, was vested entirely with them and not with the Court.

Wherefore, your Petitioner prays as follows:

1. That a writ of Habeas Corpus be granted, directed to the said C. W. Young, Sheriff of Washoe County as aforesaid, commanding him to have the body of the said J. MacArthur Wright before this Honorable Court at a time and place therein to be specified, to do and receive what shall then and there be considered by this Court, concerning said J. MacArthur Wright, together with the time and cause of his restraint, and said Writ; and that he, the said J. MacArthur Wright, may be restored to his liberty and an order be entered directing the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, to dismiss the Indictment pending against him.

2. That on the hearing on this Writ of Habeas Corpus, the Court require the attendance of witnesses by process of subpoena, and do all other things necessary for a full and fair hearing and determination of this case, or as provided in Nevada Revised Statutes 34.470.

Dated this 23rd day of October, 1967.

Vargas, Bartlett & Dixon
By John C. Bartlett
Attorneys for Petitioner
195 South Sierra Street
Reno, Nevada

State of Nevada
County of Washoe—ss.

J. MacArthur Wright, being first duly sworn, deposes and says:

That he has read the foregoing Petition for Writ of Habeas Corpus and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters he believes it to be true.

J. MacArthur Wright

Subscribed and sworn to before me
this 23rd day of October, 1967.
Barbara Reimers
Notary Public
State of Nevada
Washoe County
My Commission Expires June 20, 1968

"EXHIBIT A"

November 18, 1966

Mr. Stephen A. Drew
964 - 5th Street
Sparks, Nevada

Dear Mr. Drew:

As you know, this office represented J. MacArthur Wright in the defense of the Indictment which was found by the Grand Jury on August 11, 1966 against him, Mr. Frisby and Mr. Eddington.

District Judge John W. Barrett has sustained a Demurrer to the Indictment and given the prosecution thirty (30) days within which to re-submit the matter to your Grand Jury or to file an Information on affidavit or to file a criminal complaint and bring the matter up through the Justice Court preliminary hearing method of accusing a person of a crime.

In the event the prosecution, which I believe to be the Attorney General's Office of this State, should seek to re-submit the matter to your Grand Jury we urge upon you, in the interest of justice and fair-play, that J. MacArthur Wright, our client, Mr. Renshaw and myself be allowed to appear before you to explain our views of the facts presented and to have Mr. Wright answer any questions that you or any member of the Grand Jury wants to put to him. We would hope this request would be granted even though, as you know, the Grand Jury is not bound to hear this evidence.

Since all of us seeking to appear before you have rather busy trial calendars, we would appreciate getting as much notice as possible of the time and place of any such hearing.

Any consideration you can give to my office and my client in this matter will be greatly appreciated.

Yours very sincerely,

John C. Bartlett

JCB/g

"EXHIBIT B"

November 28, 1966

Mr. Stephen A. Drew
964 - 5th Street
Sparks, Nevada

Dear Mr. Drew:

I am now advised you are going to consider the Mark Twain Indictments on Tuesday, November 29, 1966, and it was suggested to me that the Attorney General's Office was going to take the position that you do not have the right to take further evidence on this matter, but must consider it solely on the evidence previously presented to you.

I feel certain this is not the law and that the choice of whether to take other evidence is entirely yours. My opinion is based upon considerable research done over the weekend and the good sense of the situation. As always I could be in error on this, but I would appreciate it if you would not take either my interpretation of the law or the Attorney General's interpretation if he believes you cannot receive further evidence, but rather consult with the District Attorney's Office who I believe by statute are your counsel, or if you get the approval of the County Commissioners you could engage your own counsel to advise you.

Even if I am in error on the law regarding evidence, I still request the right to appear before you. As an attorney having had approximately six years experi-

ence in the District Attorney's Office of Washoe County and twenty-nine years of practice, with time out for being in the service, I feel with the evidence before you I could demonstrate to you rather clearly that a re-indictment would be wrong, and I would hope there would be many questions that would be in your mind and the minds of the other Grand Jurors that I could answer for you.

It is my understanding that the Grand Jury is the sole judge as to who can be allowed to appear before them. Nevada Revised Statutes Section 172.320 (3) provides as follows:

> "Except the District Attorney and such other persons as the Grand Jury may require to be present, no person shall be permitted to be present before the Grand Jury besides the witness actually under examination . . . ".

Of course no person can be present when you are voting and the question of whether you would want me present when my client is testifying would be entirely up to you since he and I are both willing that he appear either with or without counsel.

Your consideration, and that of the other members of the Grand Jury will, of course, be appreciated by my client and by me.

Yours very sincerely,
John C. Bartlett

JCB/g

Filed October 23, 1967,
H. K. Brown, Clerk.

Appendix D

Western Union Telegram

1967 NOV 6 PM 3 56

353P PST NOV 6 67 PRB173
PR CYA036 RX PD CARSON CITY NEV 6 337P PDT

VARGAS, BARTLETT AND DIXON: ATTN JOHN BARTLETT ESQ
195 SOUTH SIERRA ST RENO NEV

THE STATE IS GOING TO SEEK A WRIT OF PROHIBITION AGAINST THE SECOND JUDICIAL DISTRICT COURT, PROHIBITING IT FROM PROCEEDING FURTHER ON THE WRITS FILED AND JOINED IN BY THE DEFENDANTS IN THE MARK TWAIN CASE. PLEASE APPEAR BEFORE THE NEVADA SUPREME COURT AT 10AM WEDNESDAY NOVEMBER 8, 1967, AT WHICH TIME THE STATE WILL SEEK ITS ALTERNATIVE WRIT

HARVEY DICKERSON ATTORNEY GENERAL

10AM 8 1967
(54).

Appendix E

Telegram Received by Telephone—Confirmation

DESTINATION RENO NEV

SALT LAKE CITY UTAH AUG 11

STEPHEN DREW, PERSONAL DELIVERY ONLY

FOREMAN GRAND JURY WASHOE COUNTY WASHOE COUNTY COURTHOUSE

MR DREW, I AM HEREBY REQUESTING THE OPPORTUNITY TO APPEAR BEFORE THE WASHOE COUNTY GRAND JURY AS I HAVE EVIDENCE AND TESTIMONY WHICH I CONSIDER TO BE PERTINENT AND EXTREMLY IMPORTANT TO A KNOWLEDGEABLE DETERMINATION ON THE PART OF THE WASHOE COUNTY GRAND JURY CONCERNING MATTERS REPORTED TO BE UNDER CONSIDERATION BY IT. CAN BE IN RENO BY PLANE WITHIN TWO OR THREE HOURS IF YOU WILL GIVE ME THE OPPORTUNITY TO SO PRESENT MYSELF.

(signature) J MAC ARTHUR WRIGHT
1155 EAST 5TH SOUTH
SALT LAKE CITY
UTAH APT 6
CFN FURN

(sub.) JOHN W WRIGHT

(SAME MSG SENT TO MR DREW CARE DISTRICT ATTORNEYS OFFICE)